*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl.Rev. 350/2007 and CRLM.A. 5817-19/2007

Reserved on : May 21, 2007
Date of decision : May 25, 2007

RASHEED MASOOD ….Petitioner

Through: Mr. H.R. Khan Suhel, Mr. Rashid Harshim, Mr. Saif Khan, Advocates.

Vs.

CENTRAL BUREAU OF INVESTIGATION ….Respondent

Through: Mr. R.M. Tewari, Advocate.

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

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Mr. Justice S. Ravindra Bhat

1. The present revision petition is preferred by the Petitioner for setting aside the order on charge under Section 120-B/420/467/468/471 I.P.C. and Section 13 (1)(d), 13 (2) of Prevention of Corruption Act passed by the Special Judge by an order dated 27.01.2007.

2. The brief facts necessary to decide this present petition are that the State of Tripura does not have any medical college of its own. Consequently some MBBS and BDS seats

are allocated every year from Central Pool by the Ministry of Health & Family Welfare, Government of India in various Medical Colleges of the country. These seats are made available to the State of Tripura for allotment of eligible students from the state on the basis of merit. The Government of Tripura constituted the Tripura Board of Joint Entrance Examination (hereafter referred to as "TBJEE") in the year 1988 for the selection of candidates through joint entrance examination, held every year. The candidates are nominated on the basis of merit. The Eligibility criteria for candidates to appear in the Joint Entrance Examination is that the candidate or his parents should have resided in Tripura continuously for 10 years or more at the time of issuance of certificate and the candidate should have passed HSC conducted by Tripura Board of Secondary Examination or equivalent. In case the candidate is not a permanent resident of Tripura and his parents are officer(s) on deputation to the Govt. of Tripura or officer in the Central Govt. working in Tripura and served in Tripura for a period of 3 years or more and passed HSE from an Institute of Tripura, then too, the candidate is eligible.

3. It is alleged that the one Sachidanand Dwivedi, co-accused of the petitioner was a resident of Lucknow and he was ineligible to appear in JEE conducted by TBJEE; he did not appear in the Entrance Examination. His name was recommended for admission in the MBBS course out of the Central Pool Quota reserved for the residents of the State of Tripura. According to the prosecution, despite his ineligibility and despite his not having appeared in or cleared the Joint Entrance Examination conducted by TBJEE, his name

was recommended for admission in the MBBS course out the Central Pool Quota reserved for the residents of the State of Tripura, by a letter dated 5-9-1990.

4. It was further alleged that 17 MBBS & 2 BDS seats were allocated for the candidates of Tripura as per the records available with the Directorate of Health Services, of the State; as per the file of Department of Health and Ministry of Health and Family Welfare 22 MBBS and 4 BDS seats were allocated to the State of Tripura. 5 MBBS and 2 BDS seats were allegedly suppressed and concealed from TBJEE and Directorate of Health services, Govt. of Tripura. It was alleged that in 1990-91 co-accused Gurdial Singh was the Resident Commissioner, Govt. of Tripura and the petitioner was the then Minister of State for Health & Family Welfare, Govt. of India.

5. It is alleged that the co-accused Sachidanand Dwivedi got his name nominated from Gurdial Singh in the 1st year MBBS course in Magadh Medical College, Gaya, Bihar in academic year 1990-91 from the Central Pool Quota of Tripura. He was admitted to the course in that College. According to the prosecution (CBI) the petitioner, allegedly entered into criminal conspiracy with Gurdial Singh and the said second accused, Sachidanand Dwivedi. The co-accused Gurdial Singh allegedly issued a nomination letter in favour of Sachidanand Dwivedi to facilitate his admission in Magadh Medical College. The court framed charges against the petitioner, Gurdial Singh and co-accused Dwivedi, under Sections 468/420/471 IPC and Section 13 (1)(D), 13 (2) of Prevention of Corruption Act. The co-accused was declared a juvenile by Special Judge.

6. Learned counsel for the petitioner submitted that the nomination letter was issued by the Resident Commissioner, co accused Gurdial Singh, who was aware about the enhancement of seats. The information regarding the enhancement of seats was intimated to the Govt. of Tripura through its Resident Commissioner, who should have duly informed about it. The Petitioner further submitted that the co-accused Sachidanand Dwivedi was already in the list of Central Pool Quota. There was no question of any misconduct, or cheating, much less inducement to part with property with dishonest motive, since the petitioner, as minister, merely facilitated the enhancement of the quota for the relevant year. This was at the behest of the Government of Tripura and the then Chief Minister of the State, who kept visiting him, complaining of lack of opportunity to the students, due to non availability of institutions. The petitioner, being minister, helped in the decision to enhance the Tripura quota; however, after that action, and its due intimation to the State, he ceased to play any role. There was no material, much less any legally sustainable document or circumstance, linking his alleged role in filling the seats through ineligible candidates.

7. The learned counsel submitted that the enhancement of 5 MBBS and 2BDS seats were intimated to the Govt. of Tripura. He further submitted there is no direct proof to show his involvement. Counsel submitted that the involvement of Gurdial Singh and that of the student did not, and ought not to lead to an inference that the petitioner, a minister, whose involvement was nowhere documented, was part of a conspiracy, or that he had a

hand in the illegal or wrongful acts. In any case, no wrongful gain was shown to have accrued to the petitioner.

8. Learned counsel relied upon the judgment of the Supreme Court in *State of Bihar v. Ramesh Singh* ((1977) 4 SCC 39 where the Court observed as follows:

> *"Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, them there will be no sufficient ground for proceeding with the trial."*

9. These principles were reiterated in *Union of India -vs- Prafulla Kumar Samal* AIR 1979 SC 366. Reliance was also placed upon the decision in *Dilawar Babu Kurane -vs- State of Maharastra* AIR 2002 SC 564. It was contended that in the absence of any shred of evidence connecting the petitioner with the alleged illegal activities or wrongdoing, the tenuous piece of evidence, i.e statement of the then Officer on Special Duty, Bipin Bahadur Mathur, was insufficient to raise a grave suspicion, which was the appropriate standard requisite for framing a charge, according to the decision in *Kurane's* decision.

10. The Special Judge by his order dated 27.01.2007 charged the Petitioner and the other accused, of the offences under Sections 120-B/420/467/468/471 IPC and under Section 13 (1)(d), 13 (2) of Prevention of Corruption Act,1988. The court held that *prima facie*, the materials strongly pointed to grave suspicion against the accused's conspiracy to cheat Directorate of Health Services, Government of Tripura; Accused No.1 dishonestly and fraudulently forged and issued the nomination letter dated 05.09.1990 in favour of Sachidanand Dwivedi though he was ineligible for admission in MBBS course being not a resident of Tripura; Gurdial Singh used the format of Directorate of Health Services while issuing the nomination letter and he committed criminal misconduct by abusing his position as a public servant and used that forged nomination letter by sending the same to Magadh Medical College. The role of the Petitioner was that being the Minister of Health holding the independent charge of the Ministry by abusing his official position as public servant he concealed / suppressed 5 MBBS and 2 BDS seats of Central Pool for the academic year 1990-91 meant for residents of Tripura; he and Accused No.1 (Gurdial Singh) deprived the residents of Tripura of their right to get admission in said College.

11. The evidence discussed by the trial court, in the impugned order, indicates that the State of Tripura did not have adequate access to medical education for its students. This constrained eligible students from realizing their potential. A method was evolved by the Central Government to offset this disadvantage, to a certain extent, by creating new seats, and nominating eligible candidates from the State. The procedure for filling those seats

was through a Joint Entrance Examination. Students who qualified, were nominated to the Central seats, in various colleges throughout the country, according to their merit, based on a merit list drawn for the purpose. The creation of seats in various Central or centrally aided/ funded institution was undertaken by the Central Ministry; intimation was sent to the appropriate department of the State as and when new or additional seats were created, or made available in the quota. The State, at its end used to send the names to the Central Government, for nomination to the concerned college or colleges. This was on the basis of merit, determined from the result of the joint entrance test, in which eligible students of Tripura could compete.

12. At the relevant time, the petitioner was the Minster of state in the Centre; the co-accused Gurdial Singh was the Resident Commissioner of Tripura, at Delhi. Both knew the mechanism. The prosecution alleged that Gurdial Singh used this knowledge to manipulate a situation whereby for the relevant year, i.e 1990-91 though seven medical and dental seats were sanctioned or created at the Central level, appropriate intimation was not sent to the Government of Tripura. This resulted in a circumstance where the seats could be filled, by nomination in the Central institutions, within the Tripura quota, from among rank outsiders, who were plainly ineligible, and who had not competed in accordance with the established procedure, or qualified. The petitioner is seeking to distance himself from the whole affair alleging to be in the dark, and not involved at any stage, save the role played in the creation or sanction of the additional seats.

13. The evidence used to support framing of charge against the petitioner was that Gurdial Singh used to visit him in connection with creation of the seats; the role played by the petitioner in the creation of the seats; the statement of Shri Bipin Bihari Mathur, OSD, who stated that some persons used to visit the office of the Petitioner to enquire about the release of the Tripura quota, and the fact that the creation of additional seats was not intimated to the Tripura Government. The trial court dealt with the peculiar nature of the offence of criminal conspiracy and after analysing the attendant circumstances, proceeded to frame charges for the offences against the petitioner and other co-accused. The relevant part of statement of the witness is as follows:

> *"...the Minister has initiated note to the Ministry for increase in MBBS Seats to the government of Tripura. A couple of day after Gurdial Singh came to me in the Ministry and said that the increase in the Post-graduate Seats for the Govt. of Tripura was necessary. I told him that he should approach the Minister, as he alone can do it depending upon the number of seats available. After sometime, one day a gentleman came to me saying that he has already met the Minister and the Minister has sent me to him to find out similar information regarding the nomination case of one Sandeep pending with Tripura Government for sometime. he wanted to know the correct status of this case. I got in touch with the Minister Rasheed Masood over intercom and the Minister directed me to find out from the Resident Commissioner of Tripura Government and the present position of this person. I accordingly telephoned the Commissioner to find out the latest position. He replied that he would find out and let me know. After some days, he telephoned to inform that Sandeep's name is included in the case approved for nomination in MBBS and the letter was under issue. I passed on this information to that person and to the Minister. Later on, the same day Shri Gurdial Singh telephonically informed that the letters meant for Sandeep and one Sachidanand Diwedi were being sent by post and since inquiry has come from the Minister about Sachidanand to avoid delay in postal delivery if the letters are delivered personally to the candidates, whom*

the Minister might be knowing. Gurdial Singh requested me to collect these two Envelopes from him, place them before the Minister and seek his direction as to their prompt delivery as to the candidates. I acted accordingly and placed the two letters before the Minister and the Minister instructed me to keep the two Envelopes in the Office and if concerned person did not come the next day I should return the Envelop to Gurdial Singh for sending them by post. The same day, the candidates or their representative called to the Minister and the Envelops were handed over to them by me. After taking their receipt on plain paper, the Receipts were later on passed on to Gurdial Singh.

I did not handle any other cases or the information of the candidates to the MBBS, BDS seat by the Government of Tripura. I also did not meet Shri Gurdial Singh thereafter. Once, I receive phone call from Shri Rajinder Diwedy, S/o Sachidanand from Lucknow that his son's admission in MBBS as nominee of Government of Tripura has been questioned and he inquired from me as to what he should do in the matter. I told him that the nomination was done by the Government of Tripura therefore he should contact them or the Minister Rasheed Masood. Statement dated 3.10.96..."

14. In *Yash Pal Mittal v. State of Punjab* (1977) 4 SCC 540 the Supreme Court discussed the nature of criminal conspiracy, and stated that it is an understanding, an agreement, concert, or leagu that is the ingredient of the offence. It was held that:

"... It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknowns to one another, amongst the conspirators. In achieving the goal several offences may be

committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators."

15. In *Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra* (1981) 2 SCC 443 it was held that for the offence under Section 120-B IPC, the prosecution is not compelled to prove that the conspirators expressly agreed to do or cause the illegal action; the agreement can be proved by necessary implication. In *Noor Mahammad Mohd. Yusuf Momin v. State of Maharashtra* (1970) 1 SCC 696 it was held that Section 120-B IPC makes the criminal conspiracy as a substantive offence which postulates an agreement between two or more persons to do, or cause to be done, an act (which includes omission) by illegal means. If the offence itself is to commit an offence, no further steps need be proved, to carry the agreement into effect. In *Shivanarayan Laxminarayan Joshi v. State of Maharashtra* (1980) 2 SCC 465 the Supreme Court underlined that a conspiracy is hatched in secrecy and it is impossible to adduce direct evidence in proof. The offence can be only proved largely through inferences, drawn from acts or illegal omission committed by conspirators in pursuance of a common design. All these principles were restated and applied in *Ajay Agarwal -vs- Union of India* AIR 1993 SC 1637.

16. The Petitoner's role, which persuaded the trial court to frame the charges, were his note which culminated in the increase of seats; the visits of Gurdial Singh, to him, before and after increase in the Tripura quota; and the statement of Shri Bipin Bahadur Mathur about these incidents, and the two visits of someone enquiring about the nomination of Sachidanand Dwivedi, the co-accused who was ineligible. The witness deposed that at two separate stages, i.e before nomination to the Tripura quota seat, as well as after that event, the Minster was distinctly appraised of these; he was in the know, about the events.

17. The above analysis would show that at the relevant time, Tripura was in need of access to medical education; a novel method of nomination in Central or Centrally aided institutions was devised; eligible students from the state, determined through a competitive test held by that government were nominated. This assured some access in a Centrally available resource, specifically to such students, disadvantaged on account of their birth or domicile in an educationally backward state. The strategem employed by co-accused, and the petitioner, as per the allegations was that the demand for creation of seats was acceded to; yet the increase was suppressed from the State authorities. Resultantly, seven more seats or resources were available, but the State could not nominate eligible students, as it was kept in the dark. This facilitated filling up of those seats by persons who could not be considered eligible. As to how such persons became aware of the new seats, and what method could have been adopted in the normal course if the seats went unfilled from students of Tripura, are matters of detail; for the purpose of

this discussion it is sufficient to note that only few persons in the know of the seats were Gurdial Singh, the petitioner and the beneficiaries. In this contextual background, the role of the petitioner might ultimately be limited. However, at this stage, his involvement in the criminal conspiracy to commit the acts which are offences he is charged with, cannot be ruled out.

18. For the above reasons, I find no infirmity or illegality in the impugned order on charge. The petition has to necessarily fail; it is accordingly dismissed.

DATED: 25th May, 2007 **(S. RAVINDRA BHAT)**

JUDGE